



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,316	01/26/2001	Dan Alan Brendes	1322/49/2	7530

25297 7590 12/05/2006

JENKINS, WILSON, TAYLOR & HUNT, P. A.
3100 TOWER BLVD
SUITE 1200
DURHAM, NC 27707

EXAMINER

HARRELL, ROBERT B

ART UNIT PAPER NUMBER

2142

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,316

Applicant(s)

BRENDES ET AL.

Examiner

Robert B. Harrell

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 43-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,9-15,43,44,47-49 and 55 is/are rejected.
- 7) ☒ Claim(s) 3-8, 45-46, and 50-54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20060312 and prior.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☒ Other: see attached Office Action.

Art Unit: 2142

1. Claims 1-15 and 43-42 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The applicant should always use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
4. **The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this office action:**
 - a) **a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.**
5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligations under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102 (f) or (g) prior art under 35 U.S.C. 103.
6. Claims 1, 2, 9-15, 43, 44, 47, 48, 49, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glitho (US Patent 5,870,565) in view of Fourcand et al. (US Patent 6,731,741).
7. The rejections, and grounds for rejections, under 35 U.S.C. 103(a) as presented in examiner's prior Office Action mailed 27 July 2005, are hereby maintained and incorporated in this Office Action by reference. Also, the Advisory Action and reasons therein (i.e., the **CONTINUATION SHEET PTO-303**) mailed 21 March 2006 is also hereby maintained and incorporated in this Office Action by reference.

Art Unit: 2142

8. Claims 3-8, 45-46, 50-54, would be allowable if overcome rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The applicant responded, to the above stated rejection, on the grounds what appears to be a new supplemental declaration under 37 C.F.R. 1.131 was filed as an Addendum with the Request for Continued Examination. However, no such Addendum is part of the record and as evident to such see <http://portal.uspto.gov/external/portal/pair> (submit this applications Serial Number and click on "Image File Wrapper"). The whole deep linking URL being:

http://portal.uspto.gov/external/portal/!ut/p/_s.7_0_A/7_0_CH/.cmd/ad/.ar/sa.getBib/.ps/N/.c/6_0_69/.ce/7_0_3AB/.p/5_0_341/.d/1?selectedTab=ifwtab&isSubmitted=isSubmitted&dosnum=09770316

10. If there is no actual new declaration superceding the 27 January 2006 declaration the applicant must state in the Addendum "I. January 27, 2006 Supplemental Declaration under 37 C.F.R. § 1.131 and associated arguments responsive to the Office Action mailed July 27, 2005". In the manner so stated by the applicant, it is vague and indefinite if there is yet another supplemental declaration under 37 C.F.R. § 1.131 and associated arguments in response to the 37 C.F.R. § 1.116 filed on January 27, 2006. Examiner will not guess.

11. Per the above, the applicant must clearly indicate if there is no new supplemental declaration or if there is one, or which one is the outstanding declaration to be considered by examiner. Which declaration does the applicant wish examiner to consider. This Office Action is not final nor shall be the next subsequent Office Action be made final.

12. **A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).**

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

15. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Application/Control Number: 09/770,316

Page 4

Art Unit: 2142

A handwritten signature in black ink, appearing to read 'R. B. Harrell', with a stylized, flowing script.

ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142